

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D. BANKS, Minor.

UNPUBLISHED
October 23, 2014

No. 321119
Calhoun Circuit Court
Family Division
LC No. 2011-002604-NA

Before: METER, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

Respondent-mother, S. Joyner, appeals as of right the trial court's order terminating her parental rights to the her minor daughter under MCL 712A.19b(3)(c)(i) (the conditions that led to the adjudication continue to exist), (c)(ii) (other conditions exist that would cause the court to exercise jurisdiction), and (g) (failure to provide proper care and custody). We affirm.

I. FACTS

A. THE PREVIOUS TERMINATION

In August 2011, Joyner contacted Children's Protective Services and informed them that she was homeless and could not take care of three of her children. The trial court took jurisdiction over the children. During the proceedings, Joyner missed "numerous" visits with the children and only participated in a limited number of services. The trial court terminated Joyner's parental rights to the children in September 2012.

B. THE PETITION

The child was born in November 2012, and Children's Protective Services petitioned the trial court for protective custody of the child. The Department of Human Services (the Department) alleged that Joyner had not had a permanent address since July 2012 and had not followed through with prenatal care for the child. The trial court authorized the petition.

C. PROGRESS OF THE CASE

The trial court ordered the Department to engage Joyner in services. According to Robyn Hagen, the children's foster care worker, she referred Joyner to counseling services for emotional support in December 2012. Joyner initially participated in counseling. Hagen also referred Joyner to the Women's Co-Op for housing assistance and an Early On parenting course.

At some point in January 2013, Joyner began working at Quality Improvement. In March 2013, Joyner missed parenting time visits because she was in jail. Hagen testified that in April 2013, she referred Joyner to the Home Again Program, which provided Joyner with a parenting aide. And in April 2013, Joyner moved into her niece's home, which Hagen described as "appropriate." However, Joyner's niece moved out of the home in June 2013, the home was condemned, and Joyner moved in with an uncle. Hagen testified that the uncle's home was not appropriate for the child because the uncle had a criminal record. Hagen testified that the child was placed in a foster home and was making "good progress" in that home.

In June 2013, Joyner and the child's father, D. Banks, were involved in a domestic dispute. Joyner was arrested. Hagen testified that Joyner's counselor diagnosed her with a relational problem, and that Joyner did not have the ability to "maintain meaningful, intimate family relationships" or to "protect [a] child from physical, emotional [or] mental abuse."

Joyner missed a parenting visit while she was in jail in July 2013. Joyner also lost her job at Quality Improvement because she missed too many days of work. Hagen testified that Joyner's counseling program discharged her for failing to attend sessions. However, Joyner successfully completed the twelve-week Home Again service.

In August 2013, Joyner missed another parenting visit because she was incarcerated. Hagen testified that overall Joyner only missed "a handful" of visits, that Joyner's parenting times usually went well, and that Joyner was "very appropriate" with the child. According to Hagen, the child seemed to love Joyner and a bond existed between them.

In September 2013, Brittany Wilson became the child's foster care worker. Joyner later began employment at Systex. In October 2013, Joyner began working with Kathleen Keeder, an outreach therapist, on social support, resource management, domestic violence, and emotional stability issues.

Wilson testified that the child's father domestically assaulted Joyner in November 2013, scraping and bruising her face. In November 2013, Joyner was arrested and incarcerated on an outstanding warrant. Wilson testified that Joyner lost her employment at Systex because of her incarceration. Joyner stopped attending counseling with Keeder.

The trial court held a permanency planning hearing in January 2014. According to Wilson, Joyner had never contacted Women's Co-Op and continued to live with her uncle. Joyner claimed that she was employed at Denso, but could not provide verification of her employment. Wilson testified that Keeder had told her that Joyner refused to admit that there was domestic violence in her relationship with Banks and refused to attend domestic violence counseling. Wilson recommended termination of Joyner's parental rights.

The trial court ordered the Department to initiate termination proceedings. The trial court petitioned to terminate Joyner's parental rights on February 11, 2014.

D. THE TERMINATION HEARING

At the termination hearing in March 2014, Wilson testified that Joyner had only completed one service in a year and had not substantially complied with her service plan.

According to Wilson, Joyner failed to attend a domestic violence hearing involving Banks, and the case was dismissed. Wilson testified that Joyner had posted photographs of her bruises and scrapes on Facebook and admitted that Banks committed domestic violence. Joyner was no longer in a relationship with Banks at the time of the termination hearing. Wilson testified that Joyner inconsistently participated in counseling.

Joyner had moved in with her grandmother in January 2014, but Wilson testified that Joyner told her that her living situation was only temporary until she could locate housing. Wilson testified that Joyner held three different jobs at skilled manufacturers throughout the proceeding and was participating in a program at Michigan Works to help her seek employment. Wilson testified that Joyner quit her employment at Denso because she did not “like it.” Wilson testified that Joyner did not pay her bills.

Wilson testified that she had observed Joyner’s parenting visits, and that Joyner and the child seemed bonded. According to Wilson, the child was “doing great” in the foster care home and the child’s foster parents were interested in adoption.

E. THE TRIAL COURT’S FINDINGS AND CONCLUSIONS

The trial court found that Joyner began participating in counseling and parenting skills classes, but did not do so consistently. It also found that two or three locations employed Joyner during the proceedings, that she lost her job at least once, and left another because she did not like it. The trial court noted that Joyner was not able to care for her family without employment.

The trial court also found that Joyner was not able to maintain consistent suitable housing and did not participate at all in the Women’s Co-Op program. The trial court noted that Joyner’s frequent periods in jail would have been disruptive to the child. The trial court also found that Joyner had not addressed her domestic violence issues, and that Joyner was “putting herself and her children or child at risk in being involved in that type of situation.”

The trial court found that Joyner was not committed to bettering herself and it did not have any reason to believe that Joyner would be able to remove the barriers to returning the child to her care. The trial court opined that Joyner’s late re-interest in participating in the service plan was “too little too late[.]” The trial court noted that Joyner had the responsibility to participate and benefit in the service plan, rather than just “going through the motions,” and that Joyner had not benefitted from services. The trial court found that the Department had proved the statutory grounds by clear and convincing evidence.

Regarding the child’s best interests, the trial court found that the child was doing well and making progress in foster care, and that the child was in a “pre-adoptive placement setting[.]” It also considered a variety of other factors, and determined that the evidence preponderated in favor of termination being in the child’s best interests.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.¹ The trial court's decision is clearly erroneous when its decision falls outside the range of principled outcomes.²

B. LEGAL STANDARDS

MCL 712A.19b(3)(c) provides that the trial court may terminate a parent's rights if either of the following exist:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Termination is appropriate under MCL 712A.19b(3)(c) when the conditions that brought the children into foster care continue to exist despite "time to make changes and the opportunity to take advantage of a variety of services."³

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child with proper care and custody.⁴

¹ MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

² *Mason*, 486 Mich at 152.

³ See *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000); *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009).

⁴ *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

C. APPLYING THE STANDARDS

Joyner contends that the trial court clearly erred when it terminated her parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), and (g). We disagree.

Here, Joyner had over a year to participate in services and make the necessary changes that would allow her to be able to safely care for the child. Joyner did not participate in housing assistance, did not address her domestic violence issues with Banks, inconsistently participated in counseling, completed one parenting service but did not consistently participate in others, and was unable to secure stable housing and stable employment. Joyner only consistently participated in parenting time visits with the child.

We conclude that the trial court did not clearly err when it found that Joyner did not (1) consistently participate in the service plan, or (2) benefit from it. Because Joyner did not participate in services, she did not address the conditions that brought the child into foster care. Joyner's other issues, including unemployment, unstable housing, and participation in domestic violence, also demonstrated that she would not be able to provide the child with proper care and custody. Therefore, we conclude that the trial court did not clearly err when it found that statutory grounds existed to terminate Joyner's parental rights.

III. THE CHILD'S BEST INTERESTS

A. STANDARD OF REVIEW

The trial court must order the parent's rights terminated if it finds from a preponderance of evidence that termination is in the child's best interests.⁵ We review for clear error the trial court's determination regarding the child's best interests.⁶

B. LEGAL STANDARDS

The trial court should weigh all the evidence available to determine the child's best interests.⁷ We defer to the special ability of the trial court to judge the credibility of witnesses.⁸ "If a parent cannot or will not meet [his or] her minimum parental responsibilities, the needs of the child must prevail over the needs of the parent."⁹

⁵ MCL 712A.19b(5); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012); *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

⁶ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 355-356; 612 NW2d 407 (2000).

⁷ *Trejo Minors*, 462 Mich at 356-357.

⁸ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁹ *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000) (quotation marks and citation omitted).

To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home."¹⁰ The trial court may also consider "a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption."¹¹

C. APPLYING THE STANDARDS

Joyner contends that the trial court erred when it found that terminating her parental rights was in the child's best interests. Joyner has abandoned this issue by raising it in her statement of questions presented but failing to provide authority or argument for this assertion in her brief.¹² However, we will address the issue.

Here, the trial court indicated that it was considering a wide variety of factors when it determined that terminating Joyner's parental rights was in the child's best interests. The trial court made findings on Joyner's history of domestic violence, failure to comply with services, the child's well-being while in foster care, and the possibility of adoption. The trial court also noted that Joyner's frequent incarcerations would have been unstable for the child had the child been in Joyner's care during the pendency of the case. After reviewing the record, we are not definitely and firmly convinced that the trial court erred when it found that terminating Joyner's parental rights was in the child's best interests.

IV. CONCLUSION

We conclude that the trial court did not clearly err when it found that statutory grounds supported terminating Joyner's parental rights and termination was in the child's best interests.

We affirm.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Michael J. Riordan

¹⁰ *Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted).

¹¹ *White*, 303 Mich App at 714.

¹² *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).